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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,756	11/18/2003	Donald E. Weder	8404.024	5278

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,756

Applicant(s)

WEDER, DONALD E.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgement is made of Applicant's IDS entered 18 November 2003. A signed 1449 will accompany the next office action.

Specification

The disclosure is objected to because of the following informality:

In the "CROSS REFERENCE" the instant application is a continuation of 09/747,196 but the "COMBINED DECLARATION AND POWER OF ATTORNEY" is for a CIP. There appears to be a conflict.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,182,393 B1 (7th document on page 5 of Applicant's 1449). Although the conflicting claims are not identical,

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they are not patentably distinct from each other because: Both sets of claims are drawn to an assembly comprising wall (support surface); a floral grouping; and a sheet of material (wrapper) which is rolled about the floral grouping (having the floral grouping disposed therein), the sheet of material being releasably connected to the wall (releasably connecting) so that substantially the entire length of the wrapped floral grouping is visibly displayed on the wall (the wrapper and floral grouping contained therein are displayed).

Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,182,392 B1 (6th document on page 5 of Applicant's 1449). Although the conflicting claims are not identical, they are not patentably distinct from each other because: Both sets of claims are drawn to an assembly comprising a wall (display surface); a floral grouping; and a sheet of material which is rolled about the floral grouping (wrapped about at least a portion of the floral grouping), the sheet of material being releasably connected to the wall (releasably connected to the display surface) so that substantially the entire length of the wrapped floral grouping is visibly displayed on the wall (so as to display the wrapped floral grouping on the display surface).

Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,065,242 (5th document on page 5 of Applicant's 1449). Although the conflicting claims are not identical, they are not patentably distinct from each other because: Both sets of claims are drawn to an assembly comprising a wall (support surface); a floral grouping; and a sheet of material (wrapper) which is

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rolled about the floral grouping (floral grouping disposed in the wrapper), the sheet of material being connected to the wall (positioned on the support surface) so that substantially the entire length of the wrapped floral grouping is visibly displayed on the wall (the wrapper and floral grouping therein are displayed). Not disclosed is the sheet of material being releasably connected to the wall. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly '242 by making the sheet and floral grouping releasably connected so as to easily remove for sale.

Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,867,968 (4th document on page 5 of Applicant's 1449). Although the conflicting claims are not identical, they are not patentably distinct from each other because: Both sets of claims are drawn to a wall (support surface); a floral grouping; and a sheet of material (wrapper) which is rolled about the floral grouping (providing a floral grouping disposed in a wrapper), the sheet of material being connected to the wall (disposing the wrapper . . . on the support surface) so that substantially the entire length of the wrapped floral grouping is visibly displayed on the wall (the wrapper and floral grouping therein are optimally displayed). Not disclosed is the sheet of material being releasably connected to the wall. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly '968 by making the sheet and floral grouping releasably connected so as to easily remove for sale and to use the method of '968 with the assembly of the instant invention.

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Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,697,199 (1st document on page 5 of Applicant's 1449). Although the conflicting claims are not identical, they are not patentably distinct from each other because: Both sets of claims are drawn to a wall (support member); a floral grouping; and a sheet of material which is rolled about the floral grouping (wrapping the sheet of material about the floral grouping), the sheet of material being connected to the wall (disposing the wrapper . . . on the support surface) so that substantially the entire length of the wrapped floral grouping is visibly displayed on the wall (the wrapper and floral grouping therein are optimally displayed). Not disclosed is the sheet of material being releasably connected to the wall. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly '199 by making the sheet and floral grouping releasably connected so as to easily remove for sale and to use the method of '199 with the assembly of the instant invention.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. §103(a) as being unpatentable over Mitouard (FR 2651663 A1; 4th document list in Foreign documents section of Applicant's 1449) in view of Wallerstein et al. (US 3,271,922; 19th document on page 2 of Applicant's 1449).

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As to Claim 1, Mitouard discloses a floral grouping assembly (Fig. 2) comprising a wall (9 of Fig. 2); a floral grouping having a bloom and stem portion (shown in Fig. 2 at lower right of figure); and a sheet of material ((2 of Fig. 1) having upper and lower surfaces (Fig. 1), first and second sides (Fig. 1); the sheet of material being releasably connected to the wall (Figs. 1 and 2 using 7) to display the floral grouping in the wall so that substantially the entire length of the wrapped floral grouping is visibly displayed on the wall (Figs. 2 at lower right of figure). Not disclosed is the sheet of material rolled about the stem end of the floral grouping providing a wrapper with the stem and bloom ends being exposed. Wallerstein et al., however, disclose the sheet of material (A of Figs. 3-5) rolled about the stem end (H of Fig. 3) of the floral grouping providing a wrapper with the stem and bloom ends being exposed (Figs. 3-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly by using the rolled wrapper as disclosed by Wallerstein et al. so as to protect the flower while displaying for sale (see Wallerstein et al. at col. 1 lines 11-14).

As to Claim 2, Mitouard discloses a floral grouping assembly (Fig. 2) comprising a wall (9 of Fig. 2); a floral grouping having a bloom and stem portion (shown in Fig. 2 at lower right of figure); and a transparent sheet of material (2 of Fig. 1); the sheet of material being releasably connected to the wall (Figs. 1 and 2 using 7) to display the floral grouping in the wall so that substantially the entire length of the wrapped floral grouping is visibly displayed on the wall (Figs. 2 at lower right of figure). Not disclosed is the sheet of material rolled to define a container with open upper and lower ends and the stem and bloom ends being exposed. Wallerstein et al., however, disclose the sheet of material (A of Figs. 3-5) rolled to define a container with open upper and lower ends and the stem and bloom ends being exposed (Figs. 3-

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5). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly by using the rolled wrapper as disclosed by Wallerstein et al. so as to protect the flower while displaying for sale (see Wallerstein et al. at col. 1 lines 11-14).

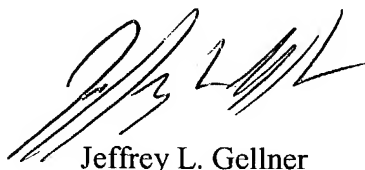
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kift and Lassale disclose in the prior art various floral groupings on a wall.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', is written over the printed name.

Jeffrey L. Gellner